IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

Bail Appl..No. 3976 of 2007()

CRIME NO.124/94 OF CBCID, CALICUT
LPC.82/2006 of J.M.F.C.-III,KOZHIKODE

.....

PETITIONER/ACCUSED:

P.K.HYDERBAVA, S/O.MOIDEEN HAJI,
PERINGADAKKATTIL, VELIMUKKU SOUTH,
VELIMUKKU POST, MALAPPURAM DISTRICT.

BY ADV. SRIC.M.MOHAMMED IQUABAL

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

B.A.No. 3976 of 2007

- -

Dated this the 2nd day of July, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 420 I.P.C. The crime was registered as early as in 1994. Investigation is complete. Final report has already been filed. But as the petitioner did not appear before the learned Magistrate, a non-bailable warrant was issued by the learned Magistrate to procure his presence. The petitioner has come to this Court with a prayer that appropriate directions under Section 438 and/or 482 Cr.P.C. may in these circumstances be issued to save the petitioner from the undeserved trauma of arrest and incarceration.

2. The learned Prosecutor, on instructions, submits that the investigation is already complete. Cognizance has been taken and the case has been registered as C.C. 780 of 2003. As the petitioner was not available, trial against the co-accused was proceeded with. He has been found not guilty and acquitted, accepting the composition. Attempts have been made to secure the presence of the petitioner, but such attempts have not been succeeded. In these circumstances the

petitioner has to approach the learned Magistrate concerned and seek regular bail in the normal and ordinary course, submits the Prosecutor.

3. I have considered all the relevant inputs. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (IR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

4. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v.

Dy.S.P. of Police (2003 (1) KLT 339).

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

tm